

The Honorable Robert S Lasnik

James McDonald
14840 119th PL NE
Kirkland, WA 98034

**UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

James McDonald

Plaintiff

No. C10-1952-RSL

v.

OneWest Bank, FSB,
Northwest Trustee Services,
Mortgage Electronic Registration Systems,
Defendants.

Plaintiffs Reply to Defendants Response to
Motion to Disburse Funds and Motion to
Strike

Noting Date: June 1, 2012

Comes now Plaintiff James McDonald and respectfully submits this Reply to the
Defendants' Response to Plaintiff's Motion to Disburse Funds.

Arguments

1. Plaintiff moves to strike the Defendants Response based on their violation of Local Rules 7(d)(3). "Any opposition papers shall be filed and served not later than the Monday before the noting date." As the Monday in question was Memorial Day, per the local rules, the Response would be due no later than the next business day, Tuesday, May 29, 2012. Instead, the Defense filed their Response on Wednesday, May 30, 2012. The only motions that allow for a Wednesday response are: motions from relief from deadlines, motions for protective orders and motions to seal per Local Rule 7(d)(2). The motion presently before the Court is none of those.

This is not the first time the Defense has ignored deadlines in this case. The Defense previously filed a brief after the deadline in their Reply to Plaintiff's Opposition to the

1 Defendants' Motion for extension of dispositive motion cutoff date (Dkt. 118) which Plaintiff
 2 brought to the Court's attention in a Surreply (Dkt. 119). In both cases, the Defense failed to
 3 request an extension of time to respond or offer any explanation or apology for their late filing.
 4 This late filing reduces the amount of time Plaintiff has had to reply, which causes prejudice to
 5 a pro se litigant as they need the full time allowed to properly respond, and shows disrespect to
 6 the Court's rules.

7 2. The Defense seeks to utilize *Meeker v. Stuart*, D.C.D.C. 1960, 188 F.Supp.272 as their
 8 basis for their argument, which requested monetary damages for the implementation of a
 9 preliminary injunction. However the Defendants' own Motion for Summary Judgment (Dkt.
 10 121) shows that *Meeker v Stuart* is not applicable in this case. In the Defendants' MSJ there is
 11 no request for relief in the form of monetary damages. The only relief requested is a finding in
 12 the favor of the Defendants and a setting of a sale date. Therefore there appears to be no reason
 13 for the Court to retain Plaintiff's funds. In Plaintiff's position for this Motion, he is not seeking
 14 an award of damages, but the release of his own funds.

15 *Meeker v. Stuart* would only apply if a party was seeking damages from the Court
 16 registry prior to final judgment. No party is seeking damages from the funds within the Court
 17 Registry. As there is no Preliminary Injunction in place and no request for relief in the form of
 18 monetary damages by the Defense, there appears to be no reason for the Defense to object to
 19 this motion.

20 Conclusion

21 Wherefore Plaintiff respectfully moves the Court to strike the Defendants' Response to his
 22 motion and grant Plaintiff's Motion to Release the funds in the Court Registry.

23 /s/ James McDonald -
 24 James McDonald
 Pro Se

Certificate of Service

I hereby certify that on the 1st day of June, 2012 the foregoing was electronically filed with the Clerk of the Court using the ECF system, which sent notification and therefore served the following:

Heidi Buck
Routh Crabtree Olsen
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/s/ James McDonald -
James McDonald
Pro Se